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In the Supreme Court of the United States

JEFF GROH, SPECIAL AGENT WITH THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS,
Petitioner,

v.

JOSEPH R. RAMIREZ, JULIA L. RAMIREZ, JOSHUA RAMIREZ, and REGINA RAMIREZ,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE STATES OF TEXAS, ALASKA, DELAWARE, FLORIDA, HAWAII, INDIANA, MARYLAND, MINNESOTA, MISSISSIPPI, NEVADA, OKLAHOMA, PENNSYLVANIA, SOUTH DAKOTA, VERMONT, VIRGINIA, WASHINGTON, AND WISCONSIN AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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In this case the Court must decide two questions: first, whether a search that is otherwise reasonable and supported by probable cause and a warrant issued by a magistrate judge is nonetheless *per se* unconstitutional because of a clerical error neglecting to specify the items to be seized on the face of the warrant; and second, whether a law-enforcement officer should be denied qualified immunity and found liable for relying on that warrant to execute the search. *Amici* States believe that both questions should be

answered in the negative, and therefore urge the Court to reverse the judgment of the United States Court of Appeals for the Ninth Circuit.

INTEREST OF *AMICI*

The States of Texas, Alaska, Delaware, Florida, Hawaii, Indiana, Maryland, Minnesota, Mississippi, Nevada, Oklahoma, Pennsylvania, South Dakota, Vermont, Virginia, Washington, and Wisconsin appear as *amici curiae* in support of Petitioner. *See* SUP. CT. R. 37.4.

Amici States have a significant interest in this case due to its direct impact on state law-enforcement efforts. Indeed, *amici* States daily confront both Fourth Amendment and qualified immunity questions that could be directly impacted by the decision in this case. State law enforcement officers routinely conduct searches and seizures that are reasonable and, where necessary, supported by warrants and probable cause; inevitably, however, some of those searches and seizures will occur pursuant to warrants that have some form of technical defect.

If those searches and seizures were to be deemed *per se* unconstitutional by virtue of that fact alone, state law enforcement would face substantial uncertainty. If, in turn, law enforcement officers were to be held liable for carrying out searches and seizures pursuant to defective warrants signed by magistrate judges, state officers would face mounting litigation and potentially unchecked liability. Neither outcome would serve the interests of law enforcement, of *amici* States, or of the law-abiding citizens residing in every State.

SUMMARY OF THE ARGUMENT

In its decision below, the Ninth Circuit incorrectly analyzed the constitutionality of Special Agent Groh's search of the Ramirez home and, therefore, erroneously concluded that Agent Groh's

conduct was both unconstitutional and not protected by qualified immunity. Instead of determining whether Agent Groh's conduct was reasonable under the totality of the circumstances, the Ninth Circuit adopted a *per se* rule that an officer acts unconstitutionally when he or she executes a warrant that is defective for lack of particularity. *See Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022, 1026 (CA9 2002), *cert. granted*, 123 S.Ct. 1354 (U.S. Mar. 03, 2003) (No. 02-811). The court's adoption of such a *per se* rule, however, cannot be squared with the common law or with this Court's Fourth Amendment jurisprudence.

Agent Groh's search of the Ramirez home was reasonable under the totality of the circumstances. It is uncontested that Agent Groh had probable cause for a warrant, that the warrant was based on information from a reliable informant, that the affidavit submitted described with particularity the items to be seized, that the search was in fact limited in scope to those items listed, and that the search occurred pursuant to a warrant duly signed by an independent magistrate judge. The Ramirezes' only complaint is that Agent Groh mistyped the items to be seized onto the warrant itself. This clerical error, admittedly a mistake, should not render Agent Groh's search unconstitutionally unreasonable.

The Ninth Circuit also erroneously concluded that Agent Groh's actions were not protected by qualified immunity. *See id.*, at 1028. Agent Groh's conduct was objectively reasonable under the circumstances; *a fortiori*, it did not violate clearly established law. Given that Agent Groh was acting pursuant to a warrant signed by a magistrate judge, and that officers should be entitled to rely on the legal determinations of judicial officers, his conduct should not, as a matter of law, have been deemed objectively unreasonable.

Accordingly, *amici* States urge this Court to make clear a simple bright line: that a law-enforcement officer cannot be found liable—and denied qualified immunity—where the officer acts

pursuant to a warrant issued by a magistrate judge. This Court should reverse the judgment of the court below, and hold that Agent Groh's conduct was both constitutional and objectively reasonable under the circumstances.

ARGUMENT

This case concerns whether a law-enforcement officer loses the protection of qualified immunity by conducting a search based on a warrant that is technically defective—even if the officer's conduct is otherwise reasonable. *Amici* States contend that an officer's search is not *per se* unconstitutional simply because a search is made pursuant to a warrant that contains a defect. Instead, an officer's search pursuant to a defective warrant is constitutional if objectively reasonable based on the totality of the circumstances, as Agent Groh's was here.

Generally, "government officials performing discretionary functions . . . are granted a qualified immunity and are 'shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Wilson v. Layne*, 526 U.S. 603, 614 (1999) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Inquiries into qualified immunity must first examine whether an officer's conduct violated a constitutional right, and, if so, then examine whether that constitutional right was clearly established at the time of the officer's conduct. *See Saucier v. Katz*, 533 U.S. 194, 200-01 (2001); *Layne*, 526 U.S., at 609.

The Court should hold that Agent Groh's conduct was not *per se* unconstitutional, and that Agent Groh is entitled to qualified immunity because his actions were objectively reasonable under the totality of the circumstances.

I. AGENT GROH'S SEARCH OF THE RAMIREZ HOME—BASED ON PROBABLE CAUSE SET FORTH IN A DETAILED AFFIDAVIT AND WARRANT APPLICATION THAT WAS APPROVED BY AN INDEPENDENT MAGISTRATE—WAS PROPERLY RESTRICTED IN SCOPE AND NOT UNCONSTITUTIONALLY UNREASONABLE.

A. The Ninth Circuit Erroneously Adopted a *Per Se* Rule Regarding Searches Based on Warrants That Contain a Defect.

The initial inquiry in this case is whether a law-enforcement officer's search of a home—based on a warrant that fails to accurately name the items intended to be seized—constitutes a *per se* violation of the Fourth Amendment, or whether, as *amici* States contend, the officer's conduct can be adjudged constitutionally reasonable under the totality of the circumstances.

The starting point of constitutional analysis is and should be the text, and the text of the Fourth Amendment provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

The Amendment has two clauses, the first mandating that searches and seizures not be "unreasonable," and the second that warrants issue only in certain circumstances. Notably, the Amendment lacks a third clause—one sometimes improperly assumed—linking the first and second and requiring that every search and seizure be preceded by probable cause and a warrant.

Amici States submit that the Amendment means what it says, that the test of constitutionality for searches and seizures is, plain and simple, reasonableness.

This Court has, in effect, said so on numerous occasions: "The touchstone of our analysis under the Fourth Amendment is *always* 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) (per curiam) (emphasis added) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)); *see also Maryland v. Wilson*, 519 U.S. 408, 411 (1997) (same); *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) ("We have long held that the 'touchstone of the Fourth Amendment is reasonableness.'") (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)).

As the Court has explained, "the essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions.'" *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979) (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978)); *see also Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *United States v. Knights*, 534 U.S. 112, 118-19 (2001); *United States v. Ramirez*, 523 U.S. 65, 71 (1998).

To be sure, whether the two clauses of the Fourth Amendment are to be read independently—or as one—is a matter on which this Court has not always spoken with one voice. *See California v. Acevedo*, 500 U.S. 565, 582 (1991) (Scalia, J., concurring in judgment). ("[O]ur jurisprudence [has] lurched back and forth between imposing a categorical warrant requirement and looking to reasonableness alone."). But the better part of this Court's Fourth Amendment case law focuses, as does the text of the Constitution,

on reasonableness *vel non* as the dispositive measure of the constitutionality of a search or seizure.

Nonetheless, in the decision below, the Ninth Circuit erroneously collapsed the Fourth Amendment's two clauses into one, effectively adopting a *per se* rule that a law-enforcement officer who conducts a search pursuant to a warrant that lacks particularity necessarily violates the Fourth Amendment—regardless of whether the officer's conduct is otherwise reasonable. *See Ramirez*, 298 F.3d, at 1026.

The Ninth Circuit engaged in a single inquiry: whether the warrant was defective. *Id.*, at 1025-27. It did not consider whether Agent Groh's conduct was constitutionally reasonable under the totality of the circumstances. *Id.* Instead, after concluding that the warrant failed to describe the items to be seized with sufficient particularity, the court stated its *per se* rule: "When officers fail to attach the affidavit to a general warrant, the search is rendered illegal because the warrant neither limits their discretion nor gives the homeowner the required information." *Id.*, at 1026 (citing *United States v. McGrew*, 122 F.3d 847, 850 (CA9 1997)).

In assessing reasonableness, this Court has eschewed *per se* rules in favor of measured analysis of the unique circumstances involved in each case. *See United States v. Drayton*, 536 U.S. 194, 201 (2002); *McArthur*, 531 U.S., at 331; *Robinette*, 519 U.S., at 39. The Ninth Circuit's decision below did not follow this Court's instruction. Instead, its judgment is based on one factor alone—that the warrant inaccurately described the items to be seized. *See Ramirez*, 298 F.3d, at 1026. Thus, the Ninth Circuit effectively created a *per se* rule that a police officer always acts unconstitutionally by executing a search—even if otherwise reasonable—that is supported by a warrant that inaccurately states the items to be seized. *See id.*

The Ninth Circuit's error is further confirmed by examining the common law at the time the Amendment was framed, a consideration that the Court has often looked to in assessing Fourth Amendment questions. *See Florida v. White*, 526 U.S. 559, 563 (1999); *Wyoming v. Houghton*, 526 U.S. 295, 299 (1999) ("In determining whether a particular governmental action violates [the Fourth Amendment], we inquire first whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed."); *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995); *Carroll v. United States*, 267 U.S. 132, 149 (1925). In the present case, the common law favors reading the Fourth Amendment's clauses independently—and therefore concluding that searches need only be "reasonable."

Indeed, the "supposed 'general rule' that a warrant is always required does not appear to have any basis in the common law." *Acevedo*, 500 U.S., at 583-84 (Scalia, J., concurring in the judgment); *see also Layne*, 526 U.S., at 610 ("[T]he common-law tradition at the time of the drafting of the Fourth Amendment was ambivalent on the question whether police could enter a home without a warrant."). Instead, the Amendment's requirements for a valid warrant—that it be based on probable cause and made with sufficient particularity—are limitations upon the issuance of warrants, not requirements that mandate their use in every search and seizure. At common law:

> "[a] warrant was a means of insulating officials from personal liability assessed by colonial juries. An officer who searched or seized without a warrant did so at his own risk; he would be liable for trespass, including exemplary damages, unless the jury found that his action was 'reasonable.' If, however, the officer acted pursuant to a proper warrant, he would be absolutely immune. By restricting the issuance of warrants, the Framers endeavored to preserve the jury's role in regulating searches and

> seizures." *Acevedo*, 500 U.S., at 581-82 (Scalia, J., concurring in the judgment) (internal citations omitted).

Thus, the common law supports a reading that the Fourth Amendment's two clauses are intended to work independently—not to impose a general rule that all searches must be made pursuant to a warrant supported by probable cause and with sufficient particularity. *See generally* Akhil Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757 (1994).

In sum, the Ninth Circuit's *per se* rule cannot be squared with this Court's jurisprudence that reasonableness based on the totality of the circumstances determines the constitutionality of an officer's conduct. Moreoever, the Ninth Circuit's holding contradicts the common law by erroneously collapsing the two clauses of the Fourth Amendment into one. Accordingly, this Court should reject the reasoning of the Ninth Circuit, and, consistent with well-settled jurisprudence, look to all of the circumstances involved to analyze the constitutionality of Agent Groh's search of the Ramirez home.

B. Agent Groh's Conduct Was Not Unreasonable Under the Totality of the Circumstances.

The facts of this case, *see Ramirez*, 298 F.3d, at 1025, establish that Agent Groh's conduct was constitutionally reasonable under the totality of the circumstances: Agent Groh received two reports that the Ramirezes were in possession of an automatic rifle, a rocket launcher, a grenade launcher, and grenades. Agent Groh prepared an application for a search warrant along with a supporting affidavit. The application "properly described both the place to be searched and the objects sought." *Id.* Agent Groh then submitted the application and affidavit to a magistrate judge, who issued the warrant challenged in this proceeding. Unfortunately, the warrant itself did not contain an accurate list of the objects to be seized.

Instead, Agent Groh had mistakenly typed a description of the Ramirez home into the space provided for the list of items sought. *Id.*

After the warrant was approved by the magistrate, Agent Groh led agents from the Federal Bureau of Alcohol, Tobacco and Firearms, along with members of the county sheriff's department, to execute the warrant. Mrs. Ramirez was present when the officers entered the home. Agent Groh explained to Mrs. Ramirez that they were searching, pursuant to a warrant, for explosive devices. Apparently, Mrs. Ramirez attempted to phone her attorney during the search but was unable to reach him. As the officers left, Agent Groh gave Mrs. Ramirez a copy of the warrant, though the application and affidavit were not attached. No items were seized, and no charges were filed against the Ramirezes. *Id.*

The next day, Mrs. Ramirez faxed a copy of the warrant to her attorney. The attorney subsequently phoned Agent Groh, who faxed the attorney the page of the warrant application that accurately listed the items to be seized. *Id.*

While Agent Groh unquestionably made a clerical mistake when he mistyped the items to be seized on the search warrant, *id.*, the totality of the circumstances plainly demonstrates that Agent Groh's conduct was objectively reasonable. Indeed; virtually every aspect of the search is unchallenged. The Ramirezes do not contest that Agent Groh had probable cause to search their home for the explosive devices listed in the warrant application. *Cf. McArthur*, 531 U.S., at 331. Nor do they contest that Agent Groh's warrant application was based on information provided by a reliable informant, *id.*, at 332, or that it was of proper detail. The Ramirezes do not at all challenge the validity of the warrant application or Agent Groh's affidavit.

The Ramirezes also do not contest that the officer's search of their home was, in fact, limited to the items listed in the warrant

application—items for which Agent Groh had probable cause to search based on reliable information. And, the Ramirezes do not contest that Agent Groh received approval for the search warrant from a fully informed independent magistrate. *Cf. Massachusettes v. Sheppard*, 468 U.S. 981, 987-91 (1984). Indeed, from the beginning of the search process to the end, the officer's search was properly limited in scope, supported by probable cause, backed by reliable information, and constrained within the boundaries intended by both Agent Groh and the independent magistrate. *Cf. United States v. Bonner*, 808 F.2d 864, 868 (CA1 1986); *United States v. Turner*, 770 F.2d 1508, 1511 (CA9 1985).

Moreover, the Ramirezes do not contend that Agent Groh's clerical mistake was intentional or that he knew of the mistake but continued with the search nonetheless. *Cf. United States v. McCain*, 677 F.2d 657, 661 (CA8 1982). The Ramirezes' one and only complaint about Agent Groh's conduct is that he mistyped the items to be seized on the actual warrant.

The totality of the circumstances plainly demonstrates the reasonableness of the search: there was probable cause; it was supported by reliable information; a warrant issued; it was signed by an independent magistrate judge; he relied on an accurate affidavit; that affidavit specified the place to be searched and items to be seized; the Ramirezes were expressly made aware of the specific items to be seized; and the search was in fact so limited. While Agent Groh's inadvertent clerical mistake may have rendered the warrant technically defective,[1] the totality of the circumstances weighs overwhelmingly in favor of the conclusion that his overall

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1. Although a warrant that fails to meet the "particularity" requirement is constitutionally infirm, *see Sanford v. Texas*, 379 U.S. 476, 511-12 (1965), whether an officer's search pursuant to such a warrant is in turn unconstitutional is a different and separate inquiry. *Cf. Maryland v. Garrison*, 480 U.S. 79, 84-89 (1987).

conduct was reasonable in this case. No one factor should trump all others.

Accordingly, the Court should reject the Ninth Circuit's holding that an officer's search of a private home is *per se* unconstitutional where the warrant fails to describe accurately the items to be seized, and hold that Agent Groh's conduct was reasonable under the totality of the circumstances.

II. QUALIFIED IMMUNITY SHOULD BAR THIS SUIT BECAUSE AGENT GROH'S CONDUCT, IN RELIANCE ON THE MAGISTRATE JUDGE'S INFORMED APPROVAL OF THE WARRANT APPLICATION, WAS OBJECTIVELY REASONABLE.

A. Under Current Law, Agent Groh's Search Was Objectively Reasonable.

Because Agent Groh's conduct was not unconstitutional, *see supra* at 9-12, qualified immunity automatically bars this civil action against him. Since there is no constitutional violation, there can be no civil liability against Agent Groh. *See Conn v. Gabbert*, 526 U.S. 286, 293 (1999). The Court, therefore, need proceed no further.

However, assuming *arguendo* that the Ninth Circuit was correct—that Agent Groh's search of the Ramirez home was in violation of the Fourth Amendment—Agent Groh should nonetheless be entitled to qualified immunity.

The second inquiry in a qualified immunity case, after finding a constitutional violation, is whether the constitutional right violated by the officer "was clearly established at the time of the search." *Layne*, 526 U.S., at 614. In practice, this inquiry "turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 639 (1987)).

The qualified immunity analysis recognizes that officers can and will make reasonable mistakes as to the legality of police conduct. Indeed, "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *Katz*, 533 U.S., at 205. Accordingly, "[t]he qualified immunity standard 'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (per curiam) (quoting *Malley v. Briggs*, 475 U.S. 335, 343, 341 (1986)). Officers "cannot be expected to predict the future course of constitutional law." *Procunier v. Navarette*, 434 U.S. 555, 562 (1978).

The Ninth Circuit erroneously held that Agent Groh is not entitled to the protections of qualified immunity because, according to the court, "no reasonable grounds exist" for Agent Groh's execution of the warrant. *Ramirez*, 298 F.3d, at 1028. The Ninth Circuit did not look to the totality of the circumstances, but instead concluded that the warrant was so "facially deficient" that Agent Groh could not reasonably have presumed it to be valid. *Id.* (citing *United States v. Leon*, 468 U.S. 897, 923 (1984)). Because the Ninth Circuit did not consider all of the factual circumstances involved in Agent Groh's search, the court's conclusion was improper.

Agent Groh's search was objectively reasonable—for purposes of qualified immunity—for the same reasons that his conduct was constitutionally reasonable. *See supra* at 9-12. In short, although Agent Groh made a clerical mistake when he mistyped the items to be seized on the warrant, it is not contested that Agent Groh had probable cause for the warrant, that the warrant was based on information from two reliable informants, that the warrant application and affidavit were proper, that the search was limited in scope to the items listed in the warrant application and affidavit, and that the search proceeded within the limited scope intended by

both Agent Groh and the independent magistrate. *Id.* Under the circumstances, Agent Groh's conduct was not "plainly incompetent." *See Hunter*, 502 U.S., at 229.[2]

In any event, Agent Groh's conduct did not violate any law that was clearly established at the time of the search. Indeed, *amici* are unable to locate any cases decided prior to Agent Groh's search of the Ramirez home adopting a rule that an officer's search pursuant to a technically defective search warrant is *per se* unconstitutional. As a result, Agent Groh cannot be held to have violated clearly established law.

The Ninth Circuit relied predominantly on its decision in *McGrew* to hold that Agent Groh's search of the Ramirez home was unconstitutional. *See Ramirez*, 298 F.3d, at 1026 (discussing *McGrew*, 122 F.3d, at 850). *McGrew*, however, was not decided until *six months after* Agent Groh's search of the Ramirez home. *See* Pet. at 3-4; *McGrew*, 122 F.3d, at 847. Therefore, the Ninth

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2. The Ninth Circuit also faulted Agent Groh because "he did not read the warrant *after* the magistrate issued it," 298 F.3d, at 1028 (emphasis added), and so did not notice the error. But, the Ninth Circuit ignored the fact that it was Agent Groh himself who had "mistakenly typed," *id.*, at 1025, the information on the warrant; therefore he would have felt no need to re-read the warrant he himself had prepared—merely to ensure that the magistrate judge had signed it. As this Court has noted, "[n]ormally, when an officer who has not been involved in the application stage receives a warrant, he will read it in order to determine the object of his search." *Sheppard*, 468 U.S., at 989 n.6. *Sheppard* went on to contrast that situation with the situation faced there—as here—when the "officer who directed the search . . . knew what items were listed in the affidavit presented to the judge, and . . . had good reason to believe that the warrant authorized the seizure of those items," *id.*, a situation squarely covered by qualified immunity regardless of whether the officer re-read the warrant after it was signed.

Circuit's *McGrew* cannot be considered clearly established law at the time of Agent Groh's search.

Moreover, the district court's decision in *McGrew*—a decision that was made prior to Agent Groh's search—*upheld* the validity of a search challenged on grounds that the warrant executed failed for lack of particularity. *See McGrew*, 122 F.3d, at 849. If the unlawfulness of a search pursuant to a defective warrant was not evident to the district court judge, it is difficult to comprehend how such unlawfulness could have been so clearly established to have been plainly evident to a law-enforcement officer.

The decision below also relied on this Court's statement, made in *Leon*, 468 U.S., at 923, that "depending on the circumstances of the particular case, a warrant may be so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." 468 U.S., at 923; *see also Ramirez*, 298 F.3d, at 1028. This statement, however, does not clearly delineate unlawful conduct. Instead, it merely acknowledges that there may be, under some hypothetical circumstances, a future case involving a warrant that is "so facially deficient" that it cannot be presumed to be valid. *Id.* And, even if this statement could be interpreted to create a "clearly established" rule of law, it is not clear, at a minimum, that such a rule would apply where, as here, the agent merely made a clerical error typing the warrant application—as opposed to wholly omitting the necessary specification from the accompanying affidavit. In no way does the Court's statement in *Leon* "clearly establish" a rule of law violated by Agent Groh.

Moreover, numerous decisions of other circuits, outside the Ninth Circuit, further demonstrate why it could not have been objectively unreasonable for Agent Groh to rely on the signed warrant in these circumstances. In *United States v. Burke*, 784 F.2d 1090, 1092-93 (CA11 1986), for example, the Eleventh Circuit held

that a warrant, though defective because it listed an incorrect address, described the place to be searched with sufficient particularity to satisfy the Fourth Amendment because the home actually searched was the home intended to be searched. *See also Bonner*, 808 F.2d, at 868; *Turner*, 770 F.2d, at 1511. In another case, the Eleventh Circuit held that ambiguity in the items to be seized on a warrant can be cured by clarity in the warrant application—even if the warrant is not attached or incorporated. *See United States v. Wuagneux*, 683 F.2d 1343, 1350-51 and 1350 n.6 (CA11 1982). This Court too has held that an officer's reliance on a warrant signed by an independent magistrate can be reasonable even where the warrant is ultimately found to suffer from a defect. *See Sheppard*, 468 U.S., at 987-91.

Because it cannot be said that a clearly established rule—in place at the time of the search—prohibited Agent Groh's search of the Ramirez home, Agent Groh is entitled to the protections of qualified immunity.

B. A Law-Enforcement Officer's Search Should Be Protected by Qualified Immunity Whenever the Search Is Executed Pursuant to a Warrant Signed by an Independent Magistrate Judge.

Agent Groh's conduct was objectively reasonable based on all of the circumstances involved in his search of the Ramirez home. *See supra* at 9-12, 13-14. However, *Amici* States submit that a far simpler rule should resolve the qualified-immunity question in this case.

Every day, state and federal law-enforcement officers seek warrants from state and federal magistrates. Those magistrate judges, professionals learned in the law, decide whether and when to issue those warrants. Two decades ago, this Court held that the exclusionary rule does not apply to evidence seized in good-faith reliance on a warrant signed by a magistrate judge. *Leon*, 468 U.S.,

at 922. That same rule has been applied to qualified immunity. *See Malley*, 475 U.S., at 344. Thus, under current case law, if a court deems an officer's reliance upon a magistrate judge's warrant to be "objectively unreasonable," qualified immunity will be denied. *Id.*

But there are substantial reasons for the rules governing qualified immunity to be even more forgiving than the current exclusionary-rule standards. Under current jurisprudence, it is not uncommon for a trial court to find a particular piece of evidence inadmissible because of problems in its seizure;[3] surely every officer involved in every one of those cases should not be found lacking in qualified immunity and so liable for damages.[4]

Accordingly, *amici* States would urge the Court to adopt an even clearer bright line: that whenever a law-enforcement officer executes a search or seizure pursuant to a warrant signed by a magistrate judge, he or she cannot be found liable in damages.

Although the Court has "generally eschewed bright-line rules in the Fourth Amendment context," *Wilson*, 519 U.S., at 885 n.1, it

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3. Of course, *amici* States would also urge limiting the overbroad application of the exclusionary rule so as to prevent freeing the guilty on what many perceive as technicalities, but that is a question to be addressed in another case.

4. Moreover, rules requiring "objective reasonableness" can, in the hands of some lower courts, expand far beyond the egregious examples envisioned by this Court. Thus, in *Malley* the Court could comfortingly caution, "it goes without saying that where a magistrate acts mistakenly in issuing a warrant but within the range of professional competence of a magistrate, the officer who requested the warrant cannot be held liable." 475 U.S., at 345 n.8. But, that is exactly what happened in the instant case, where the magistrate issued a warrant with a "mistakenly typed . . . description," *Ramirez*, 298 F.3d, at 1025, and the officer was found liable for not catching that typographical error.

has also found Fourth Amendment instances where such delineations are appropriate, *id.*; *see also Mimms*, 434 U.S., at 111 n.6. This is just such an instance.

Indeed, qualified immunity is an area where bright-line rules are especially appropriate, given that the primary purpose of denying such immunity is to deter officer misconduct. And deterrence is rendered most effective when there are clear, simple rules that all officers can understand and anticipate.

"As Lord Mansfield stated [over] two centuries ago: 'It is not fit that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer." *Malley*, 475 U.S., at 352 (Powell, J., concurring in part and dissenting in part) (quoting *Leach v. Three of the King's Messengers*, 19 How.St.Tr. 1001, 1027 (1765)).

"In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient." *Leon*, 468 U.S., at 898.[5] If it is not reasonable for the officer to second-guess the magistrate judge's legal judgment on the warrant, it is not reasonable to "[p]enaliz[e] the officer for the magistrate's error, rather than his own," *id.*, by holding him liable for damages.

Clear, bright-line rules will allow *ex ante* predictability and certainty. *See* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1178-79 (1989). And, because qualified immunity depends—at its core—on the legal understanding of law-enforcement officers, bright-line rules are particularly advantageous

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5. As this Court has made clear, officers are not required "to disbelieve a judge who has just advised him, by word and by action, that the warrant he possesses authorizes him to conduct the search he has requested." *Sheppard*, 468 U.S., at 990.

in the context of qualified immunity.

Furthermore, having a bright-line rule that an officer is entitled to qualified immunity when relying on a warrant signed by an independent magistrate judge is consistent with the history and rationales of the doctrine. Indeed, the Court's immunity jurisprudence has systematically evolved towards greater protections for officials who act within the current boundaries of the law, at any given time, *as articulated by judges. See generally Butz v. Economou*, 438 U.S. 478, 485-517 (1978). Articulating the bright line would complete the journey, and make clear that law-enforcement officers are entitled to rely upon—or, at least will not be found civilly liable for relying upon—the legal judgments of members of the judiciary.

Therefore, *amici* States urge the Court to clarify that qualified immunity protects state and federal law-enforcement officers who rely upon warrants signed by independent magistrate judges.

CONCLUSION

For these reasons, the Ninth Circuit's judgment should be reversed.

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